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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/047,583	01/14/2002	Atcf Boulos	BP-8935B CIP	7434

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EXAMINER

CHOI, FRANK I

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 08/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/047,583	Applicant(s) BOULOS ET AL.	
	Examiner Frank I Choi	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claims 1,2 are objected to because of the following informalities: Claims 1,2 recite "IU" which should be "IU".

Appropriate correction is required.

Claims 11,12 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The claims appear claim additional vitamins and minerals, however, claim 1 on which they are dependent already may contain additional vitamins and minerals.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-12,14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-11, 14 recite "and cardioprotective minerals and vitamins" however the placement in the claims renders the claims indefinite as it is uncertain whether Applicant intends that there are additional minerals and vitamins. Examiner suggests replacing the semicolon after talc with a comma and inserting after subparagraph (v) the following: "(vi) an amount of cardioprotective vitamins in addition to said encapsulated Vitamin E and an amount of

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cardioprotective minerals;" Examiner also suggests rewriting the lines after subparagraph (v) to state the following in order to clarify the language and set forth what is intended by the term "stable":

"wherein the precipitated silica . . . is present; the encapsulated Vitamin E . . . is present . . .; and the composition is compressible into stable tablet or caplet unit doses containing the encapsulated Vitamin E in the matrix of said tablet or caplet in which no Vitamin E leaches out of encapsulated Vitamin E into the tablet or caplet matrix when the tablet or caplet is stored at a room temperature for a period of at least twelve months from the date of manufacture of the tablet or caplet or when stored for three months at 40°C and a relative humidity of 75%."

Claims 11, 12 and 14 purport to added vitamins and minerals to the composition, however, claim 1 may or may not already contain additional vitamins and minerals. Examiner requests that Applicant review said claims and cancel as not further limiting the scope of the claims or reword to language to clearly set forth language which would further limit the scope of the claims. Examiner suggests rewording claim 14 to clarify the claim language in relation to claim 1 by stating ". . . Claim 1, wherein the Vitamin E, the cardioprotective minerals and additional cardioprotective vitamins are present in amounts effective to provide a cardiovascular benefit by decreasing the level of homocysteine in said human, with the proviso that each unit dose contains at least 100 IU Vitamin E.

Claim Rejections - 35 USC § 103

The rejection of Claims 1-14 under 35 U.S.C. 103(a) over Tritsch et al. (US Pat. 6,030,645) in view of Boyle et al. (US Pat. 5,925,381), EP 0 595 005 and Schmidt et al. (US pat. 4,486,435) is withdrawn in view of the cancellation of Claim 13 and Declaration of Atef Boulos (6/7/2004) which provides evidence of the criticality of amounts and ratios of precipitated silica and calcium silicate relative to the stability of the tablet, i.e. non-leaching of Vitamin E from the tablet.

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Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


A facsimile center has been established in Technology Center 1600. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier number for accessing the facsimile machine is (703) 872-9306.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Choi whose telephone number is (571)272-0610. Examiner maintains a flexible schedule. However, Examiner may generally be reached Monday-Friday, 8:00 am – 5:30 pm (EST), except the first Friday of the each biweek which is Examiner's normally scheduled day off.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Mr. Gary Kunz, can be reached at 571-272-0887. Additionally, Technology Center 1600's Receptionist and Customer Service can be reached at (571) 272-1600.

FIC

August 20, 2004



S. MARK CLARDY
PATENT EXAMINER
GROUP 1200
1616